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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 JAMES PAUL McCARTNEY,

4 Plaintiff,

New York, N.Y.

5 v.

17 Civ. 363 (ER)

6 SONY/ATV MUSIC PUBLISHING,
7 LLC, *et al.*,

8 Defendants.

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9
10 April 19, 2017
10:00 a.m.

11 Before:

12 HON. EDGARDO RAMOS,

13 District Judge

14
15 APPEARANCES

16
17 MORRISON & FOERSTER, LLP
Attorneys for Plaintiff
18 BY: MICHAEL A. JACOBS
J. ALEXANDER LAWRENCE
19 ROMAN A. SWOOPES

20
21 PRYOR CASHMAN, LLP
Attorneys for Defendants
22 BY: TOM J. FERBER
DONALD S. ZAKARIN

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record.

MR. JACOBS: Good morning, your Honor. Michael Jacobs from Morrison & Foerster. With me is Roman Swoopes and Alex Lawrence.

THE COURT: Good morning.

MR. ZAKARIN: Good morning, your Honor. Don Zakarin from Pryor Cashman for Sony/ATV, and with me is my partner Tom Ferber.

THE COURT: And good morning to you, all.

This matter is on before me for a pre-motion conference on the defendant's request for leave to file a motion to dismiss on a number of grounds, however this is the first time that this case is before me. So, Mr. Jacobs, let me give you the opportunity in the first instance to tell me a little bit about your case.

You can remain seated or use the podium; however you feel most comfortable.

MR. JACOBS: Thank you, your Honor.

The Copyright Act has a very powerful provision granting authors the right to terminate their, any grants that they made prior to the extended term that starts in year 56 of a copyright term. Section 304 says that the author has the right to terminate that grant notwithstanding any agreement to

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1 the contrary. The Sony/ATV defendants here, through a
2 subsidiary in the U.K., managed to work an end-run around a
3 similar provision of the Copyright Act, Section 203, that deals
4 with a slightly different period of the copyright term that is
5 being terminated, and they filed suit against the Duran Duran
6 group in the U.K., arguing to the U.K. Court that U.K. contract
7 law trumps the provision of the Copyright Act allowing the
8 author to terminate the grant of the copyright in the extended
9 term at issue there. The U.K. Court ruled that it didn't
10 really have the provisions of the Copyright Act under U.S. law
11 properly before it and applying U.K. contract law ruled that
12 U.K. contract law trumped and that it would be a breach of the
13 contract that assigned -- that Duran Duran used to assign its
14 copyrights, it would be a breach of contract if they exercised
15 their U.S. copyright termination rights.

16 Parenthetically, the termination right at issue here
17 only applies to U.S. copyrights, it doesn't apply to, for
18 example, U.K. copyrights or copyrights arising under any other
19 national copyright law.

20 THE COURT: So, what are we talking about then here?
21 I mean, as I understand it these copyrights, the rights
22 thereunder were assigned or granted in the U.K., correct?

23 MR. JACOBS: They were granted under -- let's assume
24 for present purposes that the agreements in question are
25 U.K.-governed agreements in which in the '60s The Beatles, more

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1 precisely McCartney and Lennon, assigned their copyrights and
2 their compositions to publishers, and then publishers assigned
3 to publishers, and now it is with Sony/ATV.

4 THE COURT: Okay.

5 MR. JACOBS: So, with the Duran Duran decision behind
6 them, the Sony/ATV representatives, speaking with McCartney's
7 representatives said, in words or substance, we have a claim
8 against you, we have a threat against you, we have a potential
9 theory that can trump your otherwise valid exercise of your
10 termination rights. Various words were said that led
11 McCartney's representatives to think soon or at some point
12 McCartney would be sued in the U.K. for exercising his
13 termination rights.

14 So, to try and figure out whether there really was a
15 claim here letters were exchanged. We wrote, and said: *We*
16 *have exercised our termination rights. We have sent you these*
17 *termination notices. Do you dispute them? Were they*
18 *rightfully exercised?* Letter back: *We don't dispute the*
19 *validity of your terminations under the Copyright Act.* Letter
20 back: *But you didn't answer the second part of this, were they*
21 *rightfully exercised or do you have a claim for breach?* Answer
22 back: *Well, we may or may not have a claim for breach. It all*
23 *depends on what happens in the Duran Duran case. We are not*
24 *saying we are going to sue you, we are not saying we will not*
25 *sue you, we won't give you a promise we won't sue you. There*

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1 *is a possibility, therefore, that we will sue you.*

2 And so, with that exchange of letters, we filed a
3 declaratory judgment action before your Honor.

4 THE COURT: Assuming there is a breach, when does it
5 accrue?

6 MR. JACOBS: That's a very good question.

7 The Copyright Act, this whole termination provision is
8 very finely crafted in the copyright Act. The terminations
9 become effective, the first one becomes effective next year for
10 "Love Me Do," the 1962 Beatles Song. They then roll out in
11 2018, 2019, 2020, etc., over time.

12 The claim of breach could accrue anticipatorily, I
13 suppose, now. This is really a U.K. law question, right? Does
14 U.K. contract law have a claim for anticipatory breach?
15 Because we have sent out the termination notices and we regard
16 them and they regard them as legally effective termination
17 notices. So, that act has been accomplished.

18 THE COURT: Let me ask you this. Explain to me why,
19 if the notice is valid and they acknowledge that the notice is
20 valid, how they can have a claim of breach of contract down the
21 line?

22 MR. JACOBS: This is the real live disagreement before
23 your Honor. Our view is that under the "notwithstanding any
24 agreement to the contrary" language, there can be no claim of
25 breach. Their view is that -- you can see it in the letter

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1 before you, we really have a disagreement about what law
2 controls here. We are asking for a declaration from your Honor
3 that U.S. copyright law answers the beginning and end of this
4 question and that with the "notwithstanding any agreement to
5 the contrary" language, there can be no claim of breach.

6 Now, that doesn't answer all the litigation that might
7 flow from these very valuable rights. Let's say they go to
8 Zimbabwe and file a suit under Zimbabwe law and say, under
9 Zimbabwe law there is a claim, Zimbabwe law is written that
10 says any time anybody anywhere in the world exercises a
11 termination right there is a breach of Zimbabwe law.

12 I use this, obviously, just to set up a hypothetical
13 here. The fact that we may get a ruling from your Honor -- I
14 am sort of anticipating where you may go here -- doesn't answer
15 all the questions that might arise in this dispute between the
16 parties, but with a ruling from this Court that Section 304
17 means what it says and that "notwithstanding any agreement to
18 the contrary" means notwithstanding any agreement under any
19 potentially applicable law, then we will have accomplished our
20 objectives for the moment before your Honor.

21 THE COURT: So, if I rule in the way that you ask, the
22 U.S. rights will be determined but can you still be sued for
23 breach in the united Kingdom?

24 MR. JACOBS: We believe that if we get such a ruling
25 from your Honor, we will have potentially claim or issue

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1 preclusion defenses. Conceivably if Sony/ATV sued us in the
2 U.K. we could be back before you saying, your Honor, they're
3 trifling with your jurisdiction here. You ruled there is no
4 claim of breach, they're going elsewhere to pursue a claim of
5 breach.

6 So, there are various possibilities for heading off
7 such a lawsuit were it to be brought. Number one, the
8 declaratory value of this would be very significant. There is
9 plainly confusion about how this provision of the Copyright Act
10 should be applied under foreign law by foreign courts and a
11 clear declaration from your Honor that, as to U.S. copyright
12 law Section 304 is the beginning and the end of the answer, it
13 would go a long way toward resolving this matter.

14 THE COURT: Where, from your perspective, is the
15 Duran Duran case, procedurally?

16 MR. JACOBS: It is on appeal.

17 THE COURT: And what can happen? What is the range of
18 outcomes that can happen and how does that affect your case
19 here?

20 MR. JACOBS: I am uncertain of the full range of
21 potential outcomes under U.K. procedure. On appeal,
22 Duran Duran will argue that the High Court misapplied the
23 material before it on Section 203, the corresponding provision
24 of the Copyright Act that is at issue there -- I am nearly
25 certain -- and they will argue that the High Court got it wrong

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1 in concluding that it misunderstood U.S. copyright law or it
2 misapprehended the effect of that under U.K. contract law
3 principles. I imagine that is what they will argue and,
4 conceivably, they could be successful.

5 The lower court, the so-called High Court ruling reads
6 in the nature of an evidentiary conclusion that U.S. law was
7 not properly adduced. The threat to us is that with the
8 effective date coming soon, it's time to start thinking about
9 how these rights will be exploited post-termination effective
10 date. And with this cloud hanging out over us that we may be
11 sued in the U.K., we have a cloud on our title. In a sense
12 this is sort of like a quiet title action where we want to
13 quiet the title to the extended term of copyright for which the
14 concededly effective termination notices have been set.

15 THE COURT: Can I truly quiet title? I mean, if there
16 is this question as to how the copyright laws interact with the
17 laws of the United Kingdom -- and, why are we here, by the way?

18 MR. JACOBS: We are here because this is a U.S.
19 defendant. We have an issue of U.S. copyright law. Very
20 strong copyright policy in favor of authors, very clear
21 provisions, and they have told us that while they regard the
22 termination notices as effective, they are not conceding that
23 those termination rights were rightfully exercised as a matter
24 of an agreement they say is to the contrary.

25 THE COURT: Was any relevant or any document that is

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1 at issue in this case, any contract, any grant of a right, were
2 any of those executed here in the United States?

3 MR. JACOBS: I don't believe -- I wouldn't want to
4 double check, your Honor, but our theory does not rest on the
5 fact that the instruments themselves are U.S. law instruments.

6 THE COURT: They were entered into, presumably, as
7 early as 1962, at in the case of "Love Me Do?"

8 MR. JACOBS: That's right, your Honor.

9 THE COURT: Is there only one song associated with
10 each termination notice or multiple?

11 MR. JACOBS: Multiple songs are -- the notices are
12 prescribed under the copyright office regulations and I believe
13 some of the notices contain multiple songs. There is a window
14 during which you can transmit the notice, it gets recorded in
15 the copyright office. After the copyright office reviews it --
16 and yes, the notices that were sent have multiple songs
17 associated with them.

18 THE COURT: Is the legal issue at play in the
19 Duran Duran action the same as the legal issue in this case?

20 MR. JACOBS: Very close. Close enough that our
21 adversary here wishes to hold out the prospect that if
22 Duran Duran goes their way, they could sue us for breach in the
23 U.K. The language in 203 is the same, it is "notwithstanding
24 any agreement to the contrary." It is a different period of
25 copyright that's terminated and, of course, if we were

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1 litigating this in the U.K. the agreements are different, they
2 were entered into at different times. Particularly here, the
3 extended term at issue was enacted first with the '76 Copyright
4 Act, so the assignments at issue here could not have been
5 entered into in anticipatory grant of the extended term. The
6 extended term didn't exist.

7 So, let me just give you sort of the decision logic
8 that we propose for this case.

9 This is a question of U.S. law. The Copyright Act
10 says you don't need to look to conflicts of laws principles to
11 decide this case because it says notwithstanding any agreement
12 to the contrary and the ruling we seek is that ruling, that
13 U.S. law controls here, U.S. law says notwithstanding any
14 agreement to the contrary, that means notwithstanding any
15 agreement to the contrary regardless of where it's entered
16 into.

17 They have argued and will surely argue that, actually,
18 to get the ruling we seek of no breach, you would need to treat
19 questions of U.K. contract law. That's their pitch to you.

20 Our argument is no, you don't need to, but if you do,
21 we will prove to you that as a matter of U.K. law properly
22 considered, U.K. law would defer to U.S. copyright law on this
23 question. There is a famous case called Campbell Connelly in
24 the U.K. that stands for that principle.

25 THE COURT: Would we have to wait until the resolution

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1 of the appeal in the Duran Duran case to see whether or not
2 that's the case?

3 MR. JACOBS: I think this case arises now and so we
4 would do our best to prove to you what U.K. law holds on this
5 question.

6 The Duran Duran High Court said we don't properly have
7 U.S. copyright law before us so we are just ruling on U.K.
8 principles. But, the reason I went off on this path is that we
9 would also argue to you that as a matter of proper contract
10 interpretation, given the fact that these grants were entered
11 into before the extended term existed, there can be no claim of
12 breach. Again, we would adduce, if we were in this alternative
13 world where we are looking at U.K. law, we would adduce U.K.
14 interpretive principles to address that question.

15 But, our view is you don't need to go down that path.
16 Sort of forecasting for you the way briefing may occur, we may
17 not get a threshold ruling from you that I don't need to
18 consider U.K. law. So, you may see a brief from us that says
19 our view is U.S. law answers all the questions here but should
20 your Honor disagree or should your Honor want to hear more,
21 here is "the more" about how this would properly be treated
22 under U.K. law because we are asking you for quiet title to
23 these terminated rights.

24 THE COURT: I guess I may have asked this question in
25 a slightly different way, but why isn't there acknowledgment

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1 that these termination notices are valid enough for you?

2 MR. JACOBS: What we would need from them is an
3 acknowledgment that they are valid and rightfully exercised,
4 notwithstanding any agreement to the contrary, just like the
5 copyright law says. That's what they haven't given us. They
6 have not given us a covenant not to sue. They have not said we
7 are not going to see you in the U.K. no matter what. What they
8 are asking you on this proposed motion to dismiss, they're
9 asking you to let them hold out the threat of litigation in the
10 U.K. and not adjudicate the declaratory judgment we have
11 brought in the U.S. That, to us, just seems like a -- it has
12 to be a logical contradiction under declaratory judgment
13 jurisprudence. It can't be that they can hold out a threat of
14 litigation and then say to you there is no ripe dispute. They
15 know how to end this case. They can grant us a covenant not to
16 sue.

17 THE COURT: Mr. Zakarin or Mr. Ferber, why don't you
18 grant them a covenant not to sue? And you can remain seated,
19 too, by the way, if you wish. Whatever makes you more
20 comfortable.

21 MR. ZAKARIN: I sit all day so I figure if I have a
22 chant to stand I might as well.

23 THE COURT: Sure.

24 MR. ZAKARIN: I am more accustomed to it.

25 Let me answer that question first and address it. The

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1 first thing they ask is would you acknowledge that the
2 termination notices are valid and were properly exercised under
3 Section 304. And we acknowledge that. They didn't ask for
4 anything more. They then ratcheted it up, and you can see in
5 the exhibits to the complaint, the correspondence went back and
6 forth. Then they said we want you to agree to waive, for all
7 time, any possible suit for breach of contract under these
8 contracts in the U.K. that you may have. And what we said to
9 them is we have no intention of suing. We have no plan to sue.
10 And, in any event, it is way premature because the law in the
11 U.K. on this issue is unsettled and we don't know what
12 Duran Duran is going -- that was even before Duran Duran had
13 entered the judgment. It has since been appealed.

14 So, it is premature. We said we have no intention of
15 pursuing you, it is premature in any event, we have every hope
16 of working with you. There is no contemplation of bringing a
17 case but not to waive, not to absolutely, categorically, under
18 all conditions waive any theoretical potential right that may
19 exist under U.K. law. We have not waived absolutely,
20 unconditionally, any theoretical right that may or may not come
21 to exist in the future.

22 THE COURT: But do I understand this correctly? Do I
23 understand your acknowledgment of the validity of the
24 termination notices to mean that the plaintiff has an absolute
25 right to take back whatever rights he may have given up?

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1 MR. ZAKARIN: That is his Congress-given right under
2 Section 304. They have a right to terminate grants that were
3 previously made. These were U.K. grants between '62 and '65 to
4 predecessors of Sony/ATV made by Lennon, made by McCartney.
5 Sony/ATV has obtained into the extended renewal term, the John
6 Lennon share of the compositions. Sony/ATV will continue to
7 have the rights in both the Lennon share and the McCartney
8 share outside of the United States for the full duration of
9 copyright outside of the United States. We are only dealing
10 with the United States. And we have acknowledged he has the
11 right to terminate. That's in the statute. He has the
12 absolute right. What they are asking is a pure U.K. issue,
13 U.K. law issue: Is it a breach of contract? In other words,
14 is there some compensable right in damages by virtue of my
15 having terminated these U.K. contracts in the U.S.? I frankly
16 don't know what the answer will be from the Duran Duran case.
17 I don't know that whatever that answer may be would fully
18 settle this issue. I do know that Sony has no intention of
19 bringing a case against McCartney in the U.K., certainly not
20 here, but if there were a case to be brought, it would be a
21 U.K. case because it is a U.K. contract.

22 The copyright issue is separate. There is no cloud on
23 McCartney's rights. By the way, he can't transfer those rights
24 to any song. The earliest he can transfer, whether it is to
25 himself or anybody else other than Sony/ATV is, I believe, for

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1 the first song -- "Love Me Do" -- in October 2018, a year and a
2 half from now. That's the earliest he can convey it to anybody
3 else. The other songs --

4 THE COURT: So, let me ask this so that I understand.

5 MR. ZAKARIN: Sure.

6 THE COURT: If he does that, if the termination is
7 valid, it terminates your rights as of 2018 here in the United
8 States. Can you still sue him in the U.K. if he attempts to
9 enforce that termination?

10 MR. ZAKARIN: In theory -- in theory -- a case could
11 be brought for breach of contract and any damages suffered
12 thereby. In theory.

13 THE COURT: Only in the U.K., not in the U.S.

14 MR. ZAKARIN: It is a U.K. contract and the parties
15 were U.K. parties. Normally it would be the U.S. entity that
16 would be saying, hey, I can't be sued in the U.K., I'm here.
17 This is Sony/ATV, which is here. Mr. McCartney is a U.K.
18 citizen. He can sue Sony. He could have brought this case, by
19 the way, right now in the U.K. for a declaration, although I
20 think he would be premature bringing it in the U.K. as well
21 because think of all the contingencies that haven't occurred:

22 The Duran Duran case has not been determined on
23 appeal. The Duran Duran case, itself, may be factually or it
24 may be distinct as a matter of evidence. We don't know what
25 the decisions will be and if they get through those three

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1 contingencies in terms of just the Duran Duran case, then it's
2 does Sony/ATV have any real intention of suing? It has been
3 the exact opposite, they have said we don't, we don't have any
4 intention of doing it.

5 That's why we believe, putting all else to the side,
6 there is no declaratory judgment here. It is so unripe, it is
7 so premature because there is not an existing concrete, certain
8 justiciable controversy. We have said the exact opposite.

9 THE COURT: There also seems to be no dispute as to
10 what Lord McCartney rights would be in the U.S.

11 MR. ZAKARIN: Correct.

12 THE COURT: So, why don't you give him a covenant not
13 to sue in the U.S.?

14 MR. ZAKARIN: Because we don't have an intention to
15 sue in the U.S. We wouldn't sue under the Copyright Act. The
16 question is -- the question is -- would his termination of
17 Sony's rights in the U.S., which he has the right to do, would
18 that be a breach of the underlying contracts in the U.K.
19 exposing McCartney to some theoretical damage claim. I don't
20 know that it does. That's the honest truth. I don't know that
21 it gives rise to such a claim. And, as I said, I don't know
22 what is going to happen with Duran Duran and I don't know that
23 Duran Duran is going to be fully dispositive, but I believe
24 that what they are asking is for an absolute covenant not to
25 sue or a waiver, which I think is (a) premature, I think there

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1 is no reason why that should be given to begin with; and I'm
2 not sure, by the way, I'm not sure that there is going to be
3 any claim that ever exists in the U.K. under the law and they
4 are asking your Honor, as we said in a very premature way, to,
5 in effect, render an advisory opinion as to what you think the
6 U.K. law on this subject, which is at the very best unsettled,
7 there is one case that has addressed this precise issue which
8 is the High Court decision in Duran Duran which is now on
9 appeal.

10 So, it's a completely unsettled issue under U.K. law
11 and they're asking, in effect, your Honor, to determine U.K.
12 law.

13 THE COURT: Is there another level beyond the
14 appellate court that the case is currently before, the
15 Duran Duran case?

16 MR. ZAKARIN: You mean can it be taken up above that?

17 THE COURT: Yes.

18 MR. ZAKARIN: The answer is I don't know, your Honor.
19 I don't think so but I don't profess to be an expert on the
20 U.K. judicial system, I am barely familiar with this judicial
21 system.

22 THE COURT: And what law applies in this case?

23 MR. ZAKARIN: In this case?

24 THE COURT: Yes.

25 MR. ZAKARIN: I don't think there is an issue of

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1 copyright law in this case at all because the issue of
2 copyright law here is do they have the right to terminate?
3 Yes. Have they validly exercised that right to terminate?
4 Yes. Will those terminations become effective on the dates
5 stated in their termination notices under Section 304? Yes.
6 That disposes of the copyright issue. Then the sole issue is,
7 is doing so, under U.K. law, a breach of the contract. And
8 that issue, as I have said, is a U.K. issue that we have no
9 intention of pursuing regardless of the outcome of the
10 Duran Duran case which itself is uncertain, premature, and even
11 if it is upheld on appeal, doesn't necessarily determine
12 whether this would be a breach of contract under these
13 contracts under U.K. law.

14 THE COURT: I'm sorry. Did I understand you to say
15 that even if it is determined that under U.K. law you have a
16 cause of action for breach of contract in the U.K., you are
17 not -- it is not your current intention to enforce that right?

18 MR. ZAKARIN: Correct. We have said that. We have
19 said that clearly that we have no intention at the current
20 time -- and I don't know that it will ever change but we are
21 not prepared to forever waive that right, but we have said we
22 do not have any present intention, regardless of what the
23 outcome of the Duran Duran case is, of bringing a breach of
24 contract case in the U.K. We are not prepared to forswear that
25 right for all time. I can't speak to the future, what may

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1 happen five years from now, three years from now, but I can say
2 and I know the management and I have spoken with the management
3 of Sony, they don't have any intention of initiating a breach
4 of contract case against Mr. McCartney upon the effectiveness
5 of the termination of "Love Me Do" or the next song, or the
6 next song, or the next song. They have no intention of doing
7 that.

8 So, this is, as I have said, a very premature case and
9 it's a case that is not a justiciable controversy warranted by
10 the positions of the parties.

11 THE COURT: I guess a couple of questions on ripeness.

12 I guess there is, on the one hand, the question of
13 U.K. law and whether it is sufficiently settled at this point
14 and what, if any changes, may come about as a result of the
15 Duran Duran case but there is also the question of the
16 termination date. So, there is an actual date that is before
17 us that is not that far in the future where -- I mean, I
18 understand the quiet title example and why shouldn't
19 Mr. McCartney be entitled to ask a Court for some level of
20 comfort that his rights are acknowledged, it is my
21 understanding, by every party in this room, that they will not
22 be tampered with.

23 MR. ZAKARIN: Well, if I can, his title is not being
24 questioned. His ability to convey his rights starting in 2018
25 is not being questioned. That's the effectiveness of your

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1 termination notices are valid, your exercise of the right is
2 valid and the termination would be effective when it becomes
3 effective which is the effective date. As I have said, he
4 can't convey to anybody but Sony/ATV until the effective date
5 of each termination notice.

6 THE COURT: But I guess it's small solace to say well,
7 you can convey it to anyone after the termination but we are
8 going to sue you.

9 MR. ZAKARIN: I understand that that is the
10 theoretical risk that exists but that's not what a declaratory
11 judgment is to eliminate and indeed the Dow Jones case which is
12 one of the cases we cited to your Honor is dead on and, indeed,
13 that was even further advanced because Dow Jones actually got
14 sued for libel in the U.K. and the Court still dismissed it as
15 being unripe because of the uncertainty, to a great extent, of
16 what U.K. law really was on the issue; and (b), because there
17 is no indication, indeed, there was a contrary indication that
18 Dow Jones would be sued or any judgment obtained in the U.K.
19 would be pursued here.

20 So, that case is even closer to being a ripe case and
21 the District Court said this isn't ripe. And there are issues
22 of uncertain U.K. law and the Second Circuit affirmed that.

23 THE COURT: Thank you.

24 Mr. Jacobs.

25 MR. JACOBS: Briefly, your Honor.

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1 To be clear, we are not asking you to decide U.K.
2 contract law. We are asking you to decide that under U.S.
3 copyright law, the "notwithstanding any agreement to the
4 contrary" language means regardless of where that contract is
5 entered into. It is a very powerful doctrine.

6 The cases have, for example, in the Ray Charles case,
7 Ray Charles did a deal -- the ray Charles estate did a deal
8 with the heirs and said we are going to give each of you
9 \$500,000 but you can have no claim of any kind against the
10 foundation that was set up. The heirs then exercised their
11 statutory termination rights. The Ray Charles foundation said
12 that's fine, they're valid, they're validly exercised, but we
13 hold out the prospect of getting our \$500,000 back. The
14 District Court in that case said no matter how you cut it, what
15 they're trying to do is get around the "notwithstanding any
16 agreement to the contrary" language. And the threat that you
17 might lose your \$500,000 bequest is enough to give rise to a
18 dispute and, more importantly for purposes of the holding, Ray
19 Charles Foundation cannot get that \$500,000 back. Under state
20 law principles that contract arguably should be enforceable.

21 So, it is a very powerful doctrine here. And to
22 merely transport the dispute to U.K. law doesn't change how
23 powerful the doctrine is, nor does it change what we are really
24 asking you to decide, that as between these parties before this
25 Court under U.S. Copyright Law, there is no claim of breach and

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1 U.S. law controls.

2 If they were right that their whole theory was that
3 they're asking to you decide a question of U.K. law, they could
4 stipulate to judgment now as to the effectiveness of 304 under
5 U.S. Copyright Law and the notwithstanding any agreement to the
6 contrary because, in their view, that doesn't answer any of the
7 questions. For us it answers nearly all the questions and
8 that's all we are asking you to decide.

9 THE COURT: I guess you are here because you want to
10 avoid litigation later but here we are in litigation so why not
11 wait and see how things play out?

12 MR. JACOBS: Because this is a very clever maneuver by
13 a holder of rights who wants to improve its negotiating
14 position and exercise leverage over Paul McCartney by holding
15 out the threat of litigation in a claim of breach. They're not
16 willing to grant a covenant not to sue even though this is so
17 theoretical, so uncertain. They're not willing to give us the
18 legal certainty that any licensor would need, any owner of
19 rights would need to go out and exploit his rights. There is a
20 threat not only against Paul McCartney of a claim breach, there
21 is a claim, potentially, for tortious interference that might
22 lie against the parties that negotiate with him. And so, the
23 sole and exclusive reason we are before you is to resolve legal
24 uncertainty that they have created over what should be a very
25 clear exercise of statutory rights.

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1 THE COURT: Thank you.

2 I think the threshold question for me is whether or
3 not to grant leave and I think leave is certainly appropriate
4 in this case. The assertions, the arguments that are being
5 made by the defendants are not wholly without merit and may
6 indeed be colorable, so you will be granted leave to file your
7 motion. How much time do you want?

8 MR. ZAKARIN: Normally I would not ask for much time.
9 I am in the middle of -- I just finished a trial last week in
10 Washington, I have got four weeks to get in findings of fact in
11 this case which is a six-week trial, so I would only ask maybe
12 by the first week in June, if that's possible. I know that's
13 late.

14 THE COURT: That's about six weeks, that's fine.

15 Mr. Jacobs, how much time to respond?

16 MR. JACOBS: We will take four weeks, your Honor.

17 THE COURT: Very well. So, the first Friday in June
18 and four weeks after that, and then I will give you two weeks
19 to reply.

20 MR. ZAKARIN: Thank you, your Honor.

21 MR. JACOBS: Your Honor, can I raise a related issue?

22 THE COURT: Yes.

23 MR. JACOBS: It is a matter of your procedure and how
24 it would work in a situation like that.

25 We think we could crystallize the dispute before your

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1 Honor as well as demonstrate that their theory is without legal
2 merit by filing a very early motion for summary judgment. We
3 think the Copyright Act, the statutory language is clear, the
4 cases are clear, and it would make very sharp for you exactly
5 what we are asking you to decide and how we are asking you to
6 decide it.

7 Is that something you would consider? Is that
8 something that we should submit a letter brief on and set
9 another conference?

10 THE COURT: Well, Mr. Zakarin?

11 MR. ZAKARIN: If I can, your Honor, it seems to me
12 that our motion is primarily a jurisdictional motion which is
13 the first thing to be determined in any case anyway, whether
14 the Court should take subject matter jurisdiction over this
15 case which is the ripeness argument. So, in terms of ordering
16 it, a summary judgment motion would seem to follow thereafter.
17 And if your Honor held that you have jurisdiction, I assume we
18 would be filing an answer to the complaint and if they wanted
19 to then move for summary judgment, I don't have a problem with
20 that, but I think doing it at this time is premature.

21 THE COURT: Right. I mean, I would have to determine
22 the jurisdictional issues as a threshold matter in the first
23 instance and I don't know whether we gain anything by having
24 you file those papers now. So, why don't we hold off on that.

25 MR. JACOBS: Thank you, your Honor.

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1 THE COURT: Very well.

2 So, Ms. Rivera, can we have the actual dates?

3 THE DEPUTY CLERK: Yes.

4 The motion is due June 2, 2017; the opposition is due
5 June 30, 2017; and the reply is due July 14, 2017.

6 THE COURT: Do we have all of those dates?

7 MR. ZAKARIN: Yes.

8 THE COURT: Anything else, Mr. Jacobs?

9 MR. JACOBS: No. Thank you very much for your time,
10 your Honor.

11 THE COURT: Mr. Zakarin?

12 MR. ZAKARIN: No, your Honor. Thank you very much.

13 THE COURT: In that event, we are adjourned. Thank
14 you, gentlemen. Very interesting.

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